



California Fair Political Practices Commission

May 19, 1989

Richard Bell
General Counsel
Watkins-Johnson Company
3333 Hillview Avenue
Palo Alto, CA 94304-1204

Re: Your Request for Informal Assistance
Our File No. I-89-213

Dear Mr. Bell:

This is in response to your letter requesting informal assistance relative to the newly enacted provisions of the Political Reform Act (the "Act").¹ Since your request does not seek to clarify the duties of a specific person under the Act, we are treating your request as one for informal assistance under Regulation 18329(c)(4)(C).²

QUESTION

Are the separately incorporated subsidiaries of a corporation "persons" for the purposes of the contribution limits of the Act?

CONCLUSION

Absent evidence that the parent corporation and its subsidiaries are acting independently of each other, a parent corporation and all its wholly owned subsidiaries are considered a single entity. Thus, the campaign contributions of the parent and its subsidiaries will be cumulated for the purposes of the contribution limits of the Act.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

The Political Reform Act, as amended by Proposition 73, provides that contributions to candidates for elective office and political committees must comply with the contribution limits set forth in Sections 85301, 85302 and 85303. Contributions from a person to a candidate are limited to \$1,000 in any fiscal year.³ (Section 85301(a).) Contributions to a political committee or broad based political committee are limited to \$2,500 per fiscal year per contributor. (Section 85302.) Contributions from a political committee to a candidate are limited to \$2,500 each fiscal year, and contributions from a broad based political committee or political party to a candidate are limited to \$5,000 per fiscal year. (Section 85303.)

You have asked whether three separately incorporated subsidiaries of your parent corporation may each contribute up to the maximum allowable contribution for a person. You have informed us that each subsidiary is wholly owned by the parent corporation. Each subsidiary has a three-member board of directors, all of which are directors on the parent company's board of directors.⁴

ANALYSIS

Section 85301 provides:

No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution or loan which would cause the total amount contributed or loaned by that person to that candidate, including contributions or loans to all committees controlled by the candidate, to exceed one thousand dollars (\$1,000) in any fiscal year.

Section 85102(b) defines "person" as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization. Thus, each separately incorporated corporation would be a person within the meaning of Section 85102(b).⁵

³ The fiscal year is July 1 through June 30. (Section 85102(a).)

⁴ You provided these facts in our telephone conversation of April 27, 1989.

⁵ In your letter you made reference to the definition of "person" in Section 82047. This definition does not apply to the contribution limits of Chapter 5 of the Act. (Section 85102.)

However, you have asked whether a parent corporation and each of its wholly owned subsidiaries may separately contribute the maximum contribution allowable for a person to a single candidate in a fiscal year. (Sections 85301.) To answer this question it is necessary to look at the goals and intent of the Act as a whole, rather than by closely scrutinizing the components of whatever definition may be applicable. (In re Witt (1976) 1 FPPC Ops. 1, copy enclosed.)

The purpose of Proposition 73's contribution limits was to place a reasonable ceiling on how much one donor can give to a candidate. (Argument in Favor of Proposition 73, California Ballot Pamphlet, June 7, 1988 Primary Election, p. 34, copy enclosed.) Generally, the Commission has presumed that parent corporations and their subsidiaries are single entities for the purposes of the Act. The focus of the analysis has been on whether the parent corporation exercises control over the contributing subsidiary. (Jackson Advice Letter, No. I-89-129, copy enclosed.)

For example in In re Kahn (1976) 2 FPPC Ops. 151 (copy enclosed) the Commission held that parent corporations and their subsidiaries must file campaign statements as major donor committees if their combined contributions met the threshold figure of \$5,000 in a calendar year. The Commission stated:

Even if the parent corporation made no campaign contributions, we require the parent and subsidiaries to file as a single "committee" unless it is clear from the surrounding circumstances that the parent and its subsidiaries acted completely independently of each other....[T]he parent corporation and its subsidiary may not rely on their separate corporate entities to evade the reporting obligations imposed by the Political Reform Act....

In addition, when interpreting the conflict-of-interest provisions of the Act, we have said:

The general principle to be applied is that a parent corporation and all of its wholly owned subsidiaries are considered to be a single entity for the purposes of disqualification under the Act, unless there are facts which indicate that the principles and purposes of the Act would be better served by the observance of the separate existence of the parent and subsidiary.

(Switzer Advice Letter, No. A-81-048, copy enclosed.)


Your corporation has three separately incorporated wholly-owned subsidiary corporations. Without exception, every director of a subsidiary is also a director of the parent corporation. According to these facts, the presumption that the parent corporation and its subsidiaries are a single entity is appropriate. While the subsidiaries may be independently managed, the officers of the subsidiaries ultimately are responsible to the parent corporation. Moreover, if the decisions of the officers of the subsidiaries are not responsive to the overall desires of the parent corporation, the officers can be removed by the directors. (In re Kahn, supra.)

Therefore, absent evidence that the parent corporation and its subsidiaries are acting completely independently of one another, their campaign contributions will be cumulated for the purposes of the contribution limits of the Act. ⁶

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

⁶ The Commission will consider the adoption of proposed Regulation 18531.5 (copy enclosed) at the June Commission meeting. This proposed regulation would codify the current staff advice as detailed above.

WATKINS-JOHNSON COMPANY

3333 HILLVIEW AVENUE
STANFORD RESEARCH PARK
PALO ALTO, CALIFORNIA 94304-1204

RICHARD G. BELL
GENERAL COUNSEL

April 10, 1989

State of California
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Request for Opinion

Ladies and Gentlemen:

Pursuant to the provisions of Government Code Section 83114, I hereby request an opinion on the following matter:

I have reviewed Section 82047 of the Code, which defines a person as:

an individual, proprietorship, firm, partnership,
joint venture, syndicate, business trust, company,
corporation, association, committee, and any other
organization or group of persons acting in concert.

It is my opinion that a separately incorporated subsidiary of a corporation is a "person" within the meaning of Section 82047, irrespective of (i) whether the subsidiary is wholly-owned or not and (ii) the composition of the Board of Directors.

Please advise as to the correctness of this opinion as well as what, if any, limitations might apply.

Thank you for your assistance.

Very truly yours,



RGB/cjm

cc: S. B. Witmer

6-11-7:38 PM '89

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PALO ALTO, CALIFORNIA 94304-1204

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Very truly yours,



RGB/cjm

cc: S. B. Witmer



California Fair Political Practices Commission

April 14, 1989

Richard G. Bell
General Counsel
Watkins-Johnson Company
3333 Hillview Avenue
Stanford Research Park
Palo Alto, Ca 94304-1204

Re: Letter No. 89-213

Dear Mr. Bell:

Your letter requesting advice under the Political Reform Act was received on April 11, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh